

July 8, 2016

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

*Electronically Submitted via ECFS*

**Re: Notice of *Ex Parte* Communication**  
***Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42;***  
***Commercial Availability of Navigation Devices, CS Docket No. 97-80***

Dear Ms. Dortch,

On July 7, 2016, representatives from the Independent Film & Television Alliance ("IFTA"), including myself, Ms. Susan Cleary, Vice President and General Counsel and Mr. Eric Cady, Senior Counsel, participated in a phone conversation with Gigi Sohn, Counselor, Office of Chairman Tom Wheeler, Eric Feigenbaum, Director of Outreach & Strategy, Office of Media Relations, Scott Jordan, Chief Technology Officer, Office of Chairman Wheeler, and Jonathan Mayer, Chief Technologist, Enforcement Bureau. Ms. Claudia James of the Podesta Group also joined the call.

The parties discussed IFTA's views and concerns regarding the Commission's proposed rule framework in the above-referenced proceeding and the alternative app-based approach recently proposed in this proceeding by some of the multichannel video programming distributors ("MVPDs").

IFTA reiterated the desirability of creating a "second pathway" to the home for programming; that is, to reach consumers without reliance upon or sole control of the MVPDs. At the same time, there is a serious need to ensure that any action taken by the Commission in this area does not harm important copyright principles, unsettle underlying contracts or otherwise destabilize the production or distribution of independent content. The broadly drafted alternative MVPD app-based proposal was cautiously welcomed by IFTA as it appears to address many of IFTA's concerns with respect to ensuring that the contractual obligations of the MVPDs related to the licensed programming are carried forward to the third-party retail device environment.

However, there are questions as to whether the MVPD app-based proposal is responsive to IFTA's other concerns, including the creation of a more competitive market. IFTA then identified issues with the MVPD app-based proposal that require further attention, including:

- the ability to preserve marketing opportunities/relationships between the MVPD and content producer at the individual MVPD app level;

- the prospect of unlicensed (or otherwise infringing) content surfacing in any retail device manufacturer's universal/integrated search results;
- specific commitments related to the non-discriminatory treatment of non-MVPD content delivery apps to ensure those apps receive similar operating terms and conditions as the MVPDs; such commitments may be required from both the third-party device manufacturers and the MVPDs themselves;
- the potential for MVPDs to exert control over the terms of, or otherwise influence, other content delivery apps and programming, including the results of any universal/integrated search features, in the third-party retail device environment;
- the need to address content recording features of third-party retail devices, specifically with respect to the content delivered via the MVPD apps to ensure those activities are authorized and comply with the underlying content license terms; and
- the Commission's ongoing involvement to ensure compliance by the MVPDs and third-party device manufacturers.

This letter is submitted electronically to your office in accordance with Section 1.1206 of the Commission's Rules.

Thank you very much.

Sincerely,



Jean M. Prewitt  
President & CEO, IFTA

cc. Eric Feigenbaum  
Scott Jordan  
Jonathan Mayer  
Gigi Sohn  
Eric Cady  
Susan Cleary  
Claudia James